UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 14

AMERICAN RED CROSS MISSOURI-
ILLINOIS BLOOD SERVICES REGION, AN
UNINCORPORATED CHARTERED UNIT OF
THE AMERICAN RED CROSS, A
FEDERALLY CHARTERED ORGANIZATION

Employer [1]

and Case 14-RC-12500

LOCAL UNION NO. 682, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, AFL-CIO

Petitioner [2]

REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

The Employer collects, processes, and distributes blood products from multiple facilities in Missouri and Illinois. Petitioner filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of all full-time and part-time collection technicians I, collection technicians II, collection specialists, apheresis collection specialists, and collection support specialists employed by the Employer.[3] A hearing officer of the Board held a hearing and the parties have filed briefs.

As evidenced at hearing and in the briefs, the parties disagree on four issues: (1) whether the Employer is a healthcare institution within the meaning of Section 2(14) of the Act; (2) whether an overall unit of employees is the only appropriate unit; (3) whether the collection team leaders are supervisors; and (4) the appropriate eligibility formula to be applied to the per diem employees.

[1] Employer's name appears as amended at hearing.
[2] Petitioner's name appears as amended at hearing.
[3] These employees are collectively referred to as "collection employees."

Contrary to the Petitioner, the Employer contends that it is a healthcare institution within the meaning of Section 2(14) of the Act. The Employer and the Petitioner agree that any unit found appropriate should include all of the Employer's facilities. The Employer contends, however, that the only appropriate unit must also include all non-supervisory employees in the following departments: donor services, hospital services, clinical services/laboratories, operations systems support, reference laboratory, regional quality, internal education, marketing/communications, facilities, and the warehouse.[4] The Employer also contends that the collection team leaders should be excluded from the unit as supervisors, the Petitioner contends that they are not supervisors and seeks their inclusion in the petitioned-for unit. The Employer and the Petitioner agree that per diem employees should be included in the unit if they satisfy the Board's eligibility requirements. However, the Employer contends that eligibility should be determined pursuant to the Board's traditional formula, while the Petitioner contends a more restrictive formula is appropriate. I have carefully considered the evidence and arguments presented by both parties on each of the four issues. As discussed below, I conclude that the evidence establishes that the Employer is a healthcare institution within the meaning of Section 2(14) of the Act. Finding the Employer to be a healthcare institution, I have applied a "pragmatic or empirical" community of interest analysis[5] and I conclude that a bargaining unit limited to the Employer's collection employees is an appropriate unit. Furthermore, I find that the collection team leaders are not supervisors within the meaning of the Act and are appropriately included in the unit. In agreement with the parties, I also include the per diem collection employees in the unit and shall determine their eligibility pursuant to the Board's traditional formula.[6] There are approximately 255 employees in the unit sought by

[4] The parties agree that employees in the administration, finance and information systems departments should be excluded as office clerical, confidential and managerial employees. Accordingly, I shall exclude these employees from the unit found appropriate here.
[5] *Park Manor Care Center*, *Inc.,* 305 NLRB 872 (1991)
[6] As articulated in *Davison-Paxon Co.*, 185 NLRB 21 (1970).

Petitioner, 617 employees in the unit sought by the Employer, and approximately 255 employees in the unit found appropriate here.

I. OVERVIEW OF EMPLOYER'S OPERATIONS

The Employer operates a blood bank collecting, processing and distributing blood and related products in Missouri, Illinois, and some counties in the State of Kansas. The Employer is the fifth or sixth largest region of the American Red Cross Biomedical Services, employing approximately 800 employees at multiple facilities within its region. The Employer distributes manufactured blood products to about 122 medical facilities in Missouri and Southern Illinois. The Employer's operations are headquartered at a facility located on Lindell Boulevard in St. Louis, Missouri ("Lindell facility"). In addition to the Lindell facility, the Employer operates a network of facilities including fixed donor sites in St. Louis County, referred to as North County, South County, and West County; in St. Charles County, Krakow, and Jefferson City (all in Missouri) and in Fairview Heights, Illinois. Fixed donor sites are the Employer's stationary facilities where donors may donate blood. The Employer maintains combined donor and distribution centers at the Lindell facility and in Cape Girardeau and Columbia, Missouri. A distribution center, equipped with refrigeration systems, stores and distributes processed blood products to area hospitals and medical facilities. The Employer also operates a facility in Effingham, Illinois solely as a distribution center. In addition to its donor and distribution centers, the Employer maintains a facility in Columbia, Missouri, providing clinical laboratory services at the University of Missouri-Columbia Hospital. The Employer's facility in St. Louis County, on Warson Road ("Warson facility"), includes the print shop, warehouse, and offices.

The Employer's chief executive officer ("CEO") is responsible for the overall operations within the region. She reports to the president of the American Red Cross. Directly reporting to the CEO are the senior director of donor services, director of human resources, regional quality director, director of hospital services, director of clinical services, director of sales, marketing, and communications, chief administrative officer, chief medical officer, regional controller,

education manager, and a manager of regional information systems. The directors and managers head the various departments, which include administration, donor services, hospital services, clinical services/laboratory, facilities, finance, information systems, internal education, marketing/communications, operations systems support, reference laboratory, regional quality, and warehouse. The senior director of donor services heads the donor services department, which includes the collection employees. The donor services department is divided into collection and recruitment, headed by the director of collection and director of recruitment respectively. The collection side is divided into five districts, each headed by a district manager. Districts 1 through 4 cover operations in defined geographical areas within the Employer's region while district 5 covers all six of the Employer's fixed donor sites. Each fixed donor site has a collection supervisor who reports to the collection manager for district 5. Districts 1 through 4 have about three to five collection supervisors each, who report to the collection manager for the particular district. A scheduling manager also reports to the director of collection. On the recruitment side of the donor services department, the director of recruitment has about two senior recruitment managers, nine recruitment managers, one senior sales manager, two scheduling coordinators and two data management analysts reporting to her. There are recruitment managers for districts 1 through 4. The record does not indicate that district 5 (fixed sites) has a recruitment manager.

The Employer recruits individual donors and sponsor groups through its recruiting operations at the Lindell facility. Donor sponsor groups may be any organization, including churches, educational institutions, civic organizations and businesses, willing to sponsor mobile blood drives on their premises. Blood donations are collected at the Employer's fixed donor sites or at scheduled mobile drives by the collection employees. Donors may donate whole blood by phlebotomy [7] or may donate blood components by apheresis. Apheresis collections require two vena punctures and automated apheresis equipment, which may use any of three

technologies, to harvest blood components such as platelets, plasma, and red blood cells while simultaneously returning to the donor unused blood components. Collection employees are also responsible for special donations which include autologous or directed donations. Autologous donations refer to drawing of blood from an individual who will later be the recipient of the blood.[8] Directed donations refer to donations of blood which are intended to benefit already identified persons. Collection employees at fixed centers also perform therapeutic phlebotomies, which involve physician-prescribed drawing and discarding of blood as therapy for excessive amounts of iron in the blood stream. Non-collection employees also perform therapeutic apheresis, which involves removal of diseased or unwanted components of the patient's blood and sometimes replenishing the patient with healthy blood components.

All blood materials collected within the region are transported to the Lindell facility for screening and processing at the hospital services department's laboratories. Whole blood collected is initially put into a centrifuge machine to segregate plasma, and the remaining blood components, through laboratory processes, are broken down into other component parts such as red cells and platelets. Apheresis collections, segregated from the point of collection, are screened and processed and may be used to produce other blood products. Simultaneously, with laboratory processing, blood samples obtained in tubes from donors by collection employees are triaged and screened for infectious diseases and other contaminants and the blood is typed at a national testing laboratory in the hospital services department. Employees in the hospital services department verify paperwork and other records completed by collection

[7] Phlebotomy is the medical term for extraction of blood.
[8] Autologous donations are usually by individuals in contemplation of elective surgery.

employees as part of the collection process. At the end of processing, assuming the blood products are free of defects, they are labeled and expiration dates are affixed on processed products. The blood products are then put in refrigeration units pending distribution to Employer's distribution centers, hospitals, and other medical facilities.

Personnel management for all employees is centrally administered from the Employer's Lindell facility. All employees in the region are covered by the same employee handbook and are subject to the same personnel policies. All employees are notified internally of job opportunities within the Region and are given first consideration. Except for per diem employees, all employees enjoy similar fringe benefits, including health insurance, disability, retirement, and tuition reimbursement. Per diem employees, not entitled to benefits, receive slightly higher wages than regular employees, but otherwise perform the same duties as other employees within their classification. All employees share a common pay scale with grades ranging from grades 1 through 10. The pay scale applies to both hourly and salaried employees.

Mobile unit assistants (MUAs) and pick up drivers, who are part of collection operations, have been represented by Petitioner since 1984. Petitioner and Employer have a current collective-bargaining agreement covering these employees. There is otherwise no collective-bargaining history.

II. STATUS AS HEALTH CARE INSTITUTION

The Employer contends that it is a health care institution within the meaning of Section 2(14) of the Act. Section 2(14) of the Act defines a healthcare institution as "any hospital, convalescent hospital, health maintenance organization, health clinic, nursing home, extended care facility, or other institution devoted to the care of sick, infirm or aged person[s]." Blood banks whose operations are limited to collecting, processing, and distributing blood products are not healthcare institutions. *Dane County American Red Cross*, 224 NLRB 323 (1976); *Green County American Red Cross*, 221 NLRB 776 (1975); *Sacramento Medical Foundation*

Blood Bank, 220 NLRB 904 (1975). However, where blood bank operations include such patient care procedures as therapeutic phlebotomies and therapeutic apheresis, done with "sufficient regularity and in a sufficient manner," such blood banks are healthcare institutions. *Syracuse Region Blood Center*, 302 NLRB 72, 73 (1991).

The Employer performs both therapeutic phlebotomies and therapeutic apheresis procedures. The record establishes that in its 2003 fiscal year,[9] the Employer performed approximately 655 therapeutic apheresis procedures and 169 therapeutic phlebotomies, constituting approximately .28 percent of the Employer's total non-therapeutic apheresis and whole blood collections. For the partial 2004 fiscal year, through March 31, 2004, the Employer performed approximately 375 therapeutic apheresis procedures and 156 therapeutic phlebotomies, constituting approximately .23 percent of the Employer's total non-therapeutic apheresis and whole blood collections. For both 2003 and 2004, the record establishes that the therapeutic procedures were performed at a fairly even rate for each month throughout the entire time period.

In *Syracuse*, the Board rejected a "percentage-of-the-employer's-business standard" for determining whether a blood bank is a healthcare institution, noting that a part of an employer's operations may have a substantial and regular impact on patient care even if that part makes up only a small percentage of the employer's total business. *Id*. at 73. In *Syracuse*, the Board found the blood bank to be a healthcare institution even though it performed only 400-600 therapeutic phlebotomies and apheresis procedures over a 12-month period, less than 1 percent of its total non-therapeutic procedures. Despite the low percentage, the Board reasoned that the employer nonetheless performed the therapeutic procedures with sufficient regularity and in a sufficiently large number and, as such, was "devoted to care of sick…persons." *Id*. at 73. Notwithstanding that the patient-care activities of the Employer here are a small part of its overall operations, the evidence shows that therapeutic phlebotomies and

apheresis procedures were regularly performed every month, with a total of about 824 in the 2003 fiscal year and 531 in the current fiscal year as of March 2004. In whole numbers, these figures represent more than the patient care procedures found sufficient in *Syracuse*. Accordingly, I find that the patient care procedures here are performed with sufficient regularity and in a sufficiently large number that the Employer is properly viewed to be "devoted to the care of sick . . . persons" and that the Employer is a health care institution under Section 2(14) of the Act. I do not rely for my conclusion on Employer's arguments regarding medical consultations by its chief medical officer, directed and autologous donations, or laboratory tests performed for hospitals. The Board considered and rejected similar arguments in *Syracuse*.

III. THE APPROPRIATE UNIT

The Employer contends that the petitioned-for unit, limited to collection employees, is not appropriate and that the unit must also include all non-supervisory employees in the following departments: donor services, hospital services, clinical services/laboratories, operations systems support, reference laboratory, regional quality, internal education, marketing/communications, facilities, and the warehouse. Although the employees in these departments clearly share some terms and conditions of employment and may constitute an appropriate unit, the Board has substantial discretion when it selects an appropriate bargaining unit. There is nothing in the statute which requires that the unit for bargaining be the *only* appropriate unit, or the *ultimate* unit, or the *most* appropriate unit; the Act requires only that the unit be "appropriate." *Bartlett Collins Co.*, 334 NLRB No. 76 (2001). Furthermore, a union is not required to seek representation in the most comprehensive grouping of employees unless "an appropriate unit compatible with that requested does not exist." *P. Ballantine &* Sons, 141 NLRB 1103 (1963); *Bamberger's Paramus*, *etc.,* 151 NLRB 748, 751 (1965). In *Faribault Clinic*, 308 NLRB 131, 133 (1992), the Board held that in the health care industry, as in any other,

[9] Employer's fiscal year runs from July 1 through June 30 of the following year.

unions are not required to organize in the most comprehensive unit available or even the most appropriate unit–they need only select an appropriate unit.

Since the Employer is a non-acute health care facility, the proper test to determine the appropriate bargaining unit is the "empirical community of interest test". *Park Manor Care Center*, 305 NLRB 872 (1991); *Allen Health Care Services*, 332 NLRB 1308 fn. 4 (2000).[10] Under that test, the Board considers community-of-interest factors, as well as those factors considered relevant by the Board in rulemaking proceedings, evidence presented during rulemaking with respect to units in acute care hospitals, and prior cases involving either the unit at issue or the particular type of health care facility in dispute. The Board, however, did not consider blood bank facilities and blood bank units during the rulemaking process. See *Collective Bargaining Units in the Health Care Industry*, 284 NLRB 1528 (1988), and 284 NLRB 1580 (1989). Blood banks, in structure, operations and staffing, are unique and quite different from other healthcare facilities such as hospitals and nursing homes. However, in *Park Manor,* the Board noted that certain general principles set forth in the rulemaking procedure are equally applicable to unit determinations in non-acute care facilities. The Board noted that in exercising its discretion to determine appropriate units, it must steer a careful course between two undesirable extremes. If the unit is too large, it may be difficult to organize and difficult for the union to represent. If the unit is too small, it may be costly for the employer to deal with and may even be deleterious for the union by too severely limiting its constituency and hence its bargaining strength. The Board's goal is to find a middle-ground position, to allocate power between labor and management by "striking the balance" in the appropriate place, with units that are neither too large nor too small. *Park Manor*, supra, at 876 quoting 53 Fed.Reg. 33904, 284 NLRB at 1534. See also *McLean Hospital Corp*., 311 NLRB 1100, 1111 (1993). Accordingly, in determining the appropriate unit, this balance must be struck; traditional community of interest factors considered, as well as prior cases dealing with blood banks.

The Board has approved limited bargaining units other than wall-to-wall units in blood bank-type employer units. In *Sacramento Medical Foundation Blood Bank*, 220 NLRB 904 (1975), the Board sanctioned a unit limited to medical laboratory technologists only. In *Greene County Chapter American Red Cross*, 221 NLRB 776 (1975), the Board found appropriate a unit limited to blood dispatchers, rejecting the employer's argument that such a unit was inappropriate inasmuch as it excluded nurses who worked with the dispatchers. In finding a blood dispatchers' only unit appropriate, the Board applied community of interest factors. Similarly, in *Midwest Region Blood Services*, 324 NLRB 166 (1997), a post-rulemaking case, the Board approved a unit of collection employees, MUAs, and supply clerks. Most recently, in *Laboratory Corporation of America Holdings*, 341 NLRB No. 140 (2004), the Board found appropriate a multi-facility unit of phlebotomists, administrative team leaders, technical team leaders, and reference clerks, excluding customer service representatives and drivers. Thus, there is ample precedent that less than wall-to-wall units are appropriate in blood bank-type settings and that such units adequately strike the balance envisioned by the Board. Moreover, as discussed in detail below, consideration of traditional community of interest factors also support the conclusion that a unit limited to collection employees is appropriate.

In determining whether a unit is appropriate for collective bargaining, the Board traditionally considers various community of interest factors including past bargaining history; general working conditions, wages, and benefits; degree of functional integration; common supervision; nature of employee skills, training, and function; interchange and contact among employees and work situs. See *Washington Palm, Inc.*, 314 NLRB 1122, 1126-1127 (1994).

As no bargaining history exists for the employees at issue, that factor cannot be considered. All of the Employer's employees are covered by the same personnel policies, employee handbook, pay grade scale, and benefit package. The other factors will be

[10] Accordingly, I reject Employer's assertion that the "disparity of interests" test should be applied.

considered below on a department-by-department basis, commencing with donor services, the department encompassing the collection employees.

Donor Services

Donor Services is the largest department and generally covers recruitment of donors and collection of blood. The department's specific job classifications at issue are set forth below.

Collection Employees: The collection employees generally collect blood products at fixed donor sites and mobile drives.[11]. Each mobile collection team is headed by a collection employee designated as a team leader. On mobile drives, collection teams of five to six collection employees travel in Red Cross' vans to blood drive sites. A designated collection employee, called a pilot, operates the van. Equipment and supplies for the blood drive are delivered to the site by the MUAs. Upon arrival at a mobile drive, the collection team helps the MUA unload equipment and supplies and then set up the site. Beds for donors, equipment, and a refreshment area have to be set up, and certain quality control checks have to be performed to ensure that the team has adequate supplies and equipment is properly functioning.

Once a donor appears for donation, a Red Cross informational brochure is given to the donor. Donor information is entered into an Electronic Blood Donation Record (EBDR) by a member of the team. The EBDR is completed on a laptop computer.[12] The EBDR is a database that allows collection employees to determine if a prospective donor is eligible to donate based on guidelines. A series of questions are put to the donor and the responses are entered into the computer.[13] At the end of the data entry process, the computer determines whether or not the prospective donor is qualified to donate. If the donor is qualified, a Blood

[11] Collection support specialists do not work at fixed sites.
[12] In the event of failure of the laptop computer collections employees may generate a manual blood donation record.
[13] In the case of repeat donors, the information already in the database is verified or updated.

Donation Record ("BDR") is printed out of the computer which the donor reviews and signs. Collection support specialists, the least-skilled collection employees, can perform this function.

The donor takes the form to a health history area staffed by a member of the team. A medical evaluation is done and vital signs of the donor are taken to ensure fitness for the donation process. The donor then goes to an area where the blood is drawn by vena puncture. Whole blood may be drawn by any collection employee who has received the requisite training, typically not the collection support specialist. Apheresis collection requires more advanced skills and is performed only by apheresis collection specialists. Blood products are drawn into blood bags and then packed in ice in coolers.

Collection employees rotate work stations during collection operations. After the donation, the donor is assessed by a member of the collection team to ensure he/she is okay. The donor then proceeds to a canteen area where refreshments are provided. Donors are encouraged to remain in this area for about 15 minutes before departing the site.

At the end of the blood drive, all team members disassemble the drive site and pack up equipment and supplies. Forms completed during the blood donation process by collection employees are reviewed by team leaders. Another collection employee reviews any paperwork or forms completed by the team leader. An operation record, which details the work of the day and any unusual occurrences, is completed by the team leader. The MUA then transports the coolers containing the blood units and the completed paperwork to the hospital services department at the Lindell facility where production work commences. Collection employees return in the van to the facility from where they came. They do not participate in the production process. Collection employees at mobile sites perform exactly the same functions at fixed sites, except that at fixed sites there is no need to transport or set up equipment. Fixed sites require a collection employee to pick up supplies at the Lindell and Warson facilities for the daily operation of the fixed site. While collection operations at fixed donor centers have regular hours of operations, collection employees working mobile sites are usually scheduled weekly on

drives slated to last about 4-5 hours, although the drives may last longer than scheduled or may be terminated early due to low donor turnout. Notwithstanding the weekly schedule, collection employees are unique in having to call in to a voice mail system to confirm their schedules, work, and team assignments. Collection employees at fixed sites frequently work on mobile drives and vice-versa.

Collection employees are paid hourly. A collection support specialist is a grade 2, collection technician I is a grade 4, collection technician II is a grade 5, collection specialist is a grade 7, and apheresis collection specialist is a grade 9.

Collection support specialists are required to have a high school diploma. Collection technicians I and II have paramedic, phlebotomy, or medical assistant training. Apheresis and collection specialists are usually, but not required to be, registered nurses (RNs) [14] or licensed practical nurses (LPNs).

Technical Support Specialist: The technical support specialist works on resolving any discrepancies that occur in the process of deliveries of blood units to the component laboratory. The technical support specialist assists in resolving issues that arise on mobile drives involving donor eligibility, protocols, and other matters. They do not work at fixed donor centers or mobile drives and, if necessary, are contacted by a telephone call. The technical support specialist ultimately reports to a collection manager, direct supervision is not in the record.

Donor Recruitment Account Managers (and Associates): Donor recruitment account managers (DRAMs) are responsible for recruiting of sponsor groups and scheduling of blood drives. DRAM associates primarily work on established accounts while full-fledged DRAMs work on establishing new or fledging donor sponsors and accounts. They visit potential sponsor groups and sites to facilitate the scheduling of mobile blood drives. DRAMs are expected to have about 15 in-person contacts with potential sponsor groups a week. Management sets the

[14] The parties stipulated that although RNs are employed in many of the classifications at issue, none are professional employees as the work does not require an RN nor is the work professional in nature.

goals for scheduled blood drives in consultation with DRAMs who set up the drives. They work out of their homes, do not have fixed schedules, and are able to schedule their work assignments themselves. DRAMs may visit blood drives they set up while collection operations are ongoing. They may interact with collection staff while at the blood drive. While at the blood drive, a DRAM may help with basic tasks such as handing out brochures to donors or helping in the canteen area. DRAMs are only at the mobile site for a fraction of the time the drive is open. DRAMs report to senior recruitment managers. DRAMs are salaried employees and are grade 7 on Employer's pay scale. DRAMs and associates must have a bachelor's degree in marketing, sales, communication, or related field or equivalent experience.

Project Lead: CD, Project Lead: O, Project Lead: Youth: Project leads work on special donor recruitment initiatives to educate particular groups and enhance donations of particular types of blood products or donors from particular groups. The project lead: CD (Charles Drew) works on an initiative to educate and increase blood donation in the African-American community. The project lead: O works on identification and recruitment of donors with O-type blood, a rare blood type. The project lead: youth initiative works on educating youths in schools. Project leads are responsible for mounting awareness and educational campaigns in targeted groups and facilitating donations within the group. While project leads are based at the Warson facility, they spend a considerable amount of time in the field. Project leads report to a manager of recruitment strategy. A bachelor's degree in marketing, business, communications, or related field is required. Project leads are salaried and grade 9 on Employer's pay scale.

Lead Telerecruiters and Telerecruiters: Telerecruiters at the Lindell and Fairview Heights facilities man Employer's call centers. There are about 48 telerecruiters and 4 lead telerecruiters. They make telephone calls to potential donors to solicit them to donate whole blood and apheresis products and they set up appointments for such donations at Employer's fixed sites and mobile sites. Telerecruiters also call donors to confirm existing appointments or

reschedule appointments. They field incoming calls from donors and prospective donors to Employer's toll-free telephone number(s) which is operative 7 days a week. Telerecruiters may be able to answer inquiries or may need to forward the call to other departments in better position to respond. Telerecruiters are required to handle a certain amount of calls and donor appointments per hour. Telerecruiters report to recruitment supervisors who in turn report to a manager of recruitment support. There are full-time and part-time telerecruiters, and a significant number of telerecruiters are college students. Lead telerecruiters are paid hourly and are grade 5 on Employer's pay scale. Telerecruiters are grade 2. In addition to incentive programs available to all employees, telerecruiters have an incentive, bonus program based on the number of confirmed donations facilitated by a telerecruiter. A high school diploma is required with some experience in marketing, customer service, or telerecruiting. An associate's degree is preferred for the lead position.

Compliance Specialist II: Two compliance specialist IIs work on validation of computer programs and new equipment used in the manufacturing processes. They have duties related to recording and reporting on incidents of adverse reactions in donors or recipients of Employer's products, and they compile reports on instances where errors are made in the process of collection employees gathering information from donors. Compliance specialist IIs are responsible for maintenance of a database that allows for tracking and recovery of products. The compliance specialist II position reports to a collection manager. Compliance specialist II is a grade 9 and the position requires a bachelor's degree.

Customer Service Representatives: Customer service representatives (CSRs) are employed at Employer's facilities in Cape Giradeau, Columbia, Kansas City, and Warson. CSRs generate preparation sheets which are used by collection employees on mobile drives. Preparation sheets contain information about the blood drives collection employees will be working on, including driving directions to location, sponsor group contact information, and

goals of the blood drive. CSRs maintain contact with sponsor groups ahead of the blood drive, generate donor lists, and confirm drive arrangements. CSRs place orders for promotional items, such as flyers, posters, and post cards, which must be sent out to sponsor groups before the blood drive. CSRs report to a customer service manager, are paid hourly, and are grade 6.

Data Entry Clerk II: The data entry clerk II performs data entry work for processing of donor and donation records. The data entry clerk II also serves in a quality control capacity by auditing data and records. The position is hourly paid and a grade 3 on Employer's pay scale. The position requires a high school diploma and data entry experience.

Data Management Analysts: The data management analysts are responsible for maintenance of the computer applications systems used in the donor services department. Based on documents such as operation records, they generate statistics for management which are used to assess productivity. Data management analysts are grade 8 on Employer's pay scale. They report to a manager of recruitment support.

Document Control Technicians: Two document control technicians perform duties related to maintenance and distribution of regulated documents and manuals. Such documents may be Blood Services Directives, Standard Operating Procedures, or other documents which provide policies and guidance to staff on matters pertinent to their work. Document control technicians are responsible for informing employees, including collection employees, of any changes in forms used. The document control technicians are based in Warson and report to a collection manager. Document control technicians are paid hourly at the grade 5 rate. The position requires no formal education but does require pertinent experience.

Donor Services Customer Service Coordinators: Three donor services customer service coordinators perform customer service functions at fixed donor centers. They greet donors, respond to donor inquiries and attempt to schedule future donations from donors at the fixed centers. Donor services customer service coordinators are grade 5 on Employer's pay scale.

Education Coordinator: The lone education coordinator in this department identifies training needs within the department and helps with scheduling of training sessions. The education coordinator reports to a compliance specialist II.[15]

Lead Stock and Inventory Specialist and Stock Inventory Assistant II: The lead stock and inventory specialist is responsible for maintaining a system that ensures the donor services department has available and in stock items and supplies needed at fixed donor sites and mobile drives. Three stock inventory assistant IIs work on processing, ordering, storage, and distribution of supplies. Both classifications are part of a central supply work group within the donor services department. They report to the central supply manager who reports to a collection manager. The lead stock and inventory specialist is required to have a bachelor's degree or equivalent experience and is paid hourly at grade 7 on the pay scale. Stock inventory assistant IIs are required to have a high school diploma and are grade 3 on the pay scale.

Scheduling Coordinators: Three scheduling coordinators create and distribute blood drive schedules and process any changes to the schedules. They enter scheduling information in computer databases. Scheduling coordinators do staff scheduling and generate preparation sheets. They prepare schedules for pick up of blood products before closing of drives where necessary. They report to a scheduling supervisor who reports to a scheduling manager. The scheduling manager reports to the director of collections. Scheduling coordinators are required to have an associate's degree. They are hourly paid and are grade 8 on the pay scale.

Staffing Coordinators: Two staffing coordinators ensure that there is adequate staff to meet collection goals and they assist in the preparation of staffing schedules. They analyze and generate staffing reports. Staffing coordinators are required to have a bachelor's degree in nursing, business management, or related area.

[15] It is not clear from the record if this education coordinator shares common supervision with education coordinators in the internal education department.

Special Donations Coordinator and Special Donations Representatives: The special donations coordinator schedules and coordinates autologous, directed, and designated donor donations. He ensures adequacy of inventory of special donations and is responsible for preparing and maintaining certain FDA-regulated documents. The special donations coordinator also takes calls from physicians and hospitals and makes special donations' appointments. The special donation representatives assist the special donations coordinator and are primarily responsible for the handling of calls from physicians and hospitals and the making of donations' appointments. The special donations coordinator is paid hourly at grade 6 on Employer's pay scale. The record does not disclose the pay grade for special donations representatives nor the qualifications required for that position.

DOT Coordinator: The DOT coordinator ensures that MUAs working within the donor services department are compliant with Department of Transportation regulations on licensure and the ceilings for the number of hours individual MUAs may operate trucks.[16]

Voluntary Chapter Coordinator: The voluntary chapter coordinator is responsible for recruitment and coordination of volunteers to assist in donor services. This position reports directly to a recruitment strategy manager and is a grade 9 on Employer's pay scale.

Accounting Specialist: The accounting specialist works at the Lindell facility and reviews bills, creates accounts payable vouchers, researches vendor inquiries, assists on payroll, and enters data for blood drives and special projects. The position requires an associate's degree in business or accounting. The accounting specialist I is paid hourly and is a grade 6.

Administrative Assistant II and III: Administrative assistants II and III perform secretarial, clerical and administrative duties for the donor services department. They assist in the production of procedure manuals and other records used by the department. Administrative Assistant II and III are grade 5 and 6, respectively on the pay scale.

[16] At the time of the hearing the duties of the DOT coordinator were being discharged by Gwen Hoffman, a stipulated Section 2(11) supervisor. I shall exclude her from the unit.

Zone Assistant: The zone assistant functions as the receptionist at the Lindell facility and performs a variety of secretarial and administrative duties. She ultimately reports to a collection manager. The zone assistant is paid hourly and is a grade 5.

Analysis

Collection employees as a group share a particularly strong community of interest. They are directly supervised separately from all other employees in the department. There is a very high degree of contact and functional integration, as they are all involved in the processing of donors and collection of their blood and related products. They work together at fixed donor sites, and they travel and work together as a team on mobile drives. There is a very high degree of interchange, the fixed donor center collection employees are able to work on mobile sites, and vice versa. During blood donation operations, collection employees are able to rotate around the tasks to be performed, and they have similar skills and operate the same equipment and devices. Collection employees share unique interests and concerns given their daily, intimate contact with donors and exposure to donors' blood and other fluids. Collection employees are a distinct and homogenous group of employees whose duties and interests set them apart from other employees.

The homogenous nature of the collection employees is further exemplified by the limited interchange and transfer between the collection employees and other donor services employees. In the past year, only four transfers occurred between a collection employee position and a non-collection position in donor services: 1. from collection support specialist to customer service representative; 2. from data entry clerk ll to collection technician l; 3. from collection technician to customer service representative; and 4. from collection technician ll to special donations coordinator. Moreover, in addition to their limited number, these transfers were permanent and voluntary and, therefore, are of limited significance for establishing community of interest. See, e.g. *Overnite Transportation Company,* 331 NLRB 662, 663 (2000). Temporary transfers, or interchange between the collection employees and other employees

within donor services is also infrequent. The only evidence of temporary interchange was some testimony that collection employees could work as telerecruiters if they needed light duty or were short some hours for the pay period. However, this evidence was undercut by collection employees who specifically testified at hearing that they had never worked in telerecruiting and were not aware of such opportunities. Indeed, a collection manager's testimony established that if, at all, assignment of collection staff to work in telerecruiting is entirely voluntary. Furthermore, as noted above, voluntary transfers are of limited significance for establishing community of interest. *Overnite Transportation Company*, supra. Further, I note that it is undisputed that telerecruiters do not work in collections.

Moreover, in addition to the limited interchange, the telerecruiters, donor recruitment account managers, project leads, customer service representatives, and special donations employees have a distinctly different function which further undermines their community of interest with collection employees. These employees are generally responsible for recruiting donors and setting up blood drives. The bulk of their work is performed in advance of collection work. Telerecruiters in particular work on telephones in an office setting. They have no personal contact with donors. Collection employees are on the front lines of drawing blood at fixed sites or out in the field at mobile sites. There are limited contacts between these employees and collection employees. If at all, the contact is limited to telephone calls to the telerecruitment department when collections staff have questions on donor eligibility. Such contact appears relatively rare given that collection teams at mobile drives and fixed sites typically have manuals, aids, staff experience, and supervision which make such calls unnecessary and infrequent. Telerecruiters, project leads, customer service representatives, and special donations employees do not typically go to blood drives. A collection technician I testified at hearing that over the course of her 3-year employment she met a project lead once. Donor recruitment account managers are the only employees that have reason to visit mobile blood drives on a somewhat regular basis, they visit about three blood drives a week. When

they do so, they are present for a fraction of the time the blood drive takes and are there in a customer service capacity. They do not perform collection tasks; at most, donor recruitment account managers may "pitch in" to handle such tasks as briefly handing out flyers or assisting in the canteen, tasks typically left to volunteers. While Employer's witnesses testified that customer service representatives may visit unusually big blood drives and assist with completion of BDRs or otherwise act as collection support specialists, there are no more than five to six such drives a year. A collection employee testifying at hearing could recall only one instance in her tenure when she saw a customer service representative working on such blood drives. Customer service representatives are not scheduled to work on drives regularly. It is not disputed that even were customer service representatives to be on site for a blood drive they would be unable to engage in any blood-drawing work and would be limited to performing more minor tasks as would be performed by the collection support specialist.

The recruitment and collection work is functionally integrated in the sense that the work of employees at the recruitment stage is necessary to generate work for collection employees. The skills and educational background of collection employees are distinctly different from that of telerecruiters, donor recruitment account managers, project leads, and customer service representatives. These employees more or less have a sales-type mission. Donor recruitment account managers and project leads are salaried and college graduates with business and marketing backgrounds. Telerecruiters have no specialized training and are required to have no more than high school diplomas; they earn significantly less than collection employees. Telerecruiters and donor recruitment account managers are eligible for certain bonuses tied to their sales-type functions, which are not available to collection employees. In fact, it is significant that donor recruitment account managers work mainly out of their homes and are able to set their own work schedules. In sharp contrast, collection employees work weekly schedules, which are subject to changes.

Although collection employees may have some contact with the technical support specialists, such contact is limited to telephone contacts, which occur when collection employees have questions regarding donor eligibility or health history for completion of BDRs. However, the collection employees have recently been instructed not to call the technical support specialists directly with questions, rather they are to go through their collection supervisor, therefore this avenue of contact has effectively ended. Although both collection employees and technical support specialists have knowledge of BDRs, the technical support specialists do not work in collection operations and they are not competent to draw blood or perform apheresis procedures. Document control technicians who coordinate manual and form updates rarely visit collection sites. They have no phlebotomy skills and essentially perform record-keeping work.

Such positions in the donor services department as accounting specialist, administrative assistants,[17] data entry clerk, data management analyst, and the zone assistant clearly do not share a significant community of interest with collection employees. These employees, as others in the department, work in an office setting performing varied clerical support and administrative tasks far removed from the work of collection employees. There is no

[17] Administrative assistants I, II and III are employed in several departments. They perform largely secretarial, clerical, data-entry and administrative duties. They are office staff, without any skills and training comparable to collection employees. There is no evidence of interchange or contacts with collection employees. I shall exclude all administrative assistants from the unit. For similar reasons, I shall also exclude the receptionist serving in the facilities department.

interchange or contact with collections employees, although they do perform functions within the department that may support the work of collection employees. Nevertheless, these employees' skills are not comparable to the skills of collection employees who have to have training in phlebotomy, health history, and completion of BDRs.

Staffing and scheduling coordinators in the donor services department are responsible for coordination of staffing and scheduling within the department. There is no interchange or contact between these employees and collection employees. This is underlined by the fact that collection employees have been specifically instructed to call their supervisors should they have questions about their work schedules, and not the staffing or scheduling coordinators. The skills utilized by collection employees are markedly different from the skills of employees working on scheduling and staffing. There is some functional integration given that the scheduling and staffing employees could be seen as performing a support function for collection employees.

Stock and inventory assistant IIs are responsible for ensuring adequate supplies are available for collection employees. Their contacts with collection employees are primarily limited to contacts with MUAs and pick-up drivers who are already in a bargaining unit represented by Petitioner. They have some contact with collection employees designated to pick up supplies for fixed site operations. However, a collection technician I testified she had never met any of the three stock inventory assistants in the donor services department. While to some extent, in managing mobile supplies, stock inventory assistants' work may be functionally integrated with the work of collection employees, they do not go out on blood drives and they do not share similar skills and training with collection employees. Stock and inventory assistants, being part of the central supply department, have different supervision than collection employees.

Lastly, the voluntary chapter coordinator does not share a community of interest with collection employees. There is no evidence of interchange or transfer with respect to the

voluntary chapter coordinator whose work involves recruitment of volunteers who may lend assistance to collection employees. The voluntary chapter coordinator does not visit blood drive sites. Moreover, the voluntary chapter coordinator reports to a recruitment strategy manager, completely outside the collections group.

In sum, I find that while all donor services employees share some interests, the collection employees, by virtue of their separate direct supervision, function, skills, work areas, and limited interchange and contact with other donor services employees, share a sufficiently distinct community of interest from the other donor services employees so as not to require the inclusion of the other donor services employees in the petitioned-for unit.

Hospital Services

Hospital services employees receive, process, and distribute blood products from the Lindell facility. This department operates 24 hours per day, 7 days per week, as blood products have to be processed within 8 hours of collection. The department is headed by the director of hospital services. The departmental classifications at issue are set forth below.

Lead Hospital Services Technicians and Technical Assistant Preps: These are the product manufacturers at the Lindell facility's component laboratories. They both do the same work except on weekends when lead hospital services technicians assume lead roles. They receive blood products from fixed donor centers and mobile sites at the component laboratory. They verify deliveries and complete certain checklists and logs. Both classifications use centrifuges, hematrons, sterile connecting devices, and other equipment in the process of separating whole blood into component parts (plasma, red cells, and platelets). Lead hospital services technicians are required to have 2 years of college; technical assistant preps a high school diploma. Lead hospital services technicians are grade 6; technical assistant preps are grade 5.

Lead Product Release Technicians and Product Release Technicians: These positions work in the quarantine and labeling area of hospital services. They are responsible for labeling

and releasing products subsequent to completion of production, national testing lab screening, and entry of BDRs. They quarantine any products that are determined unfit for release from the component laboratory. Products released are transferred for storage in a distribution area. Product release technicians are required to have completed 2 years of college and are grade 5.

Customer Service Representatives and Hospital Technician I: Customer service representatives and hospital technicians I [18] work on the distribution side, filling and shipping orders for blood products. Customer service representatives enter telephone orders into the computer system while the hospital technicians I retrieve, sort, and ship products. Customer service representatives work day shifts only on weekdays; hospital technicians I's are on duty 24 hours a day, 7 days a week. These positions report to the manager of product distribution. Customer service representatives are required to have completed 12 hours of college coursework and are grade 5 on the pay scale. A high school diploma is required for a hospital technician I, and the position is a grade 4.

Technical Support Specialists: Two technical support specialists work on training and implementation of new management directives that are applicable to the hospital services department's employees. They oversee the product planning process and ensure that management's long-range goals are established for all laboratory staff. Technical support specialists are able to plan their own work. The position requires a bachelor's degree in medical technology and is a grade 8 on the Employer's pay scale.

Hospital Services Couriers: Five hospital services couriers deliver products to hospitals. They work out of the Employer's Lindell, Effingham, Cape Giradeau, and Columbia facilities. The couriers work on weekdays on the day shift. The position is a grade 2.

Analysis

[18] Three individuals working as hospital technicians I in the distribution area are also classified as lead hospital service technicians. They work in a lead capacity.

The hospital services employees do not share a strong community of interest with the collection employees. The hospital services employees are under separate management as well as direct supervision. The functions of the employees are quite different, but are integrated in the sense that the collection employees feed work to hospital services, i.e. they collect the blood which is then processed and delivered by hospital services. However, in the past year, only one employee transferred between collection and hospital services, specifically from collection technician l to hospital technician l. This one transfer was voluntary and permanent and thus of little significance. *Overnite Transportation Company*, supra. There is no evidence of interchange or significant meaningful contact between these employees and collection employees. Collection employee personal contacts are limited to collection technicians from fixed sites, who drop off coolers at the laboratories and submit paperwork from collection sites. Collections from mobile drives are delivered by MUAs, who are already represented and thus, not at issue here. Drop off is done at the entrance to the laboratories and access to laboratory areas is restricted.

The work sites and functions of the two groups of employees are quite different. Hospital service technicians, technical assistants preps, and product release technicians work in a laboratory environment, they do not visit collection sites and have no donor contact. While collection employees and hospital services technicians and technical assistant preps both use certain instruments such as thermometers and sterile connecting devices, and receive similar training on tasks such as proper use of devices, proper packaging of blood products, and prevention of contamination, the essential functions of their positions are different and require different skills. Hospital services employees do not perform phlebotomies or health histories. Collection employees are not qualified to perform laboratory work or process the blood.

Customer service representatives and hospital technicians work on distribution of processed blood products based on orders received from Employer's customers, i.e., hospitals and medical facilities. Couriers in the department make deliveries. There is no evidence of

interchange or contacts with collection employees. Contact, if at all, would be limited to possible telephone contact to verify that quality control protocols were done and such contact may be with collection supervisors, not employees. Customer service representatives and hospital technicians do not have the skills and training required to work with collection employees on blood drives. Technical support specialists in the hospital services department work on training of staff, product planning, and long-range goals for the department's employees. Such functions are significantly different from the work of collection employees. Technical support specialists do not visit or work at fixed donor sites or mobile sites, and do not perform phlebotomies. While technical support specialists may serve as a resource to collections staff on donor eligibility requirements, and may be called upon if such questions arise, the direct telephone contacts are very limited. The evidence establishes that collection employees have recently been instructed not to call technical support specialists with questions but to call their own collection supervisors.

In view of their separate management and supervision, separate functions, skills, duties and work areas, and limited contact as well as the complete absence of interchange and transfer, I find that hospital services employees do not share so strong a community of interest with collection employees as to require their inclusion in the unit here.

Clinical Services/Laboratories

Employer's clinical services/laboratories department performs blood-testing services for patients with renal diseases; testing related to organ transplants and certain therapeutic apheresis procedures, which are prescribed by physicians as treatment for a variety of medical conditions. The clinical services/laboratories are based in Columbia and operate under an arrangement with the University of Missouri-Columbia Hospital. Employer's chief medical officer, a licensed physician, serves as director of the clinical services/laboratories department and reports to CEO Bales. The classifications at issue in this department are described below.

Therapeutic Apheresis Specialists: Therapeutic apheresis specialists (TASs) perform

therapeutic apheresis. They travel to hospitals and medical facilities to perform the procedures on patients. They appear to largely work alone and they have significant contact with physicians and other staff at hospitals and medical facilities. TASs program the apheresis equipment to achieve the desired therapy results. The work schedules of TASs include considerable "on-call' duties. There are four employees in this classification, two in Columbia and two at the Lindell facility. TASs work at the direction of the chief medical officer. Their job description specifically requires that they be licensed RNs.

Clinical Laboratory Technician: Clinical laboratory technicians (CLTs) perform automated and manual test procedures on patient blood samples in the clinical laboratories at the Columbia facility. They perform data entry duties with respect to results generated from tests and perform quality control-related tasks in the respective laboratories. A bachelor's degree is required for this position with a minimum 30 hours of science. The position is a grade 6.

Clinical Laboratory Technologist I and II: Clinical Laboratory Technologists (CLT) I and II work in the clinical laboratories performing more advanced clinical tests on specimens submitted for specific test evaluation or problem resolution. They select and prepare blood products for transfusions. They perform some quality control duties with respect to tests and equipment in the clinical laboratories. Minimum education requirement is a bachelor's degree in clinical laboratory technology and related certifications.[19] CLT I is a grade 9 and CLT II is a grade 10 position on the Employer's pay scale.

Clinical Laboratory Technical Assistant: They provide support to the operations of the clinical laboratories by collecting specimens for testing from patients, processing, and ordering appropriate testing. They do data entry, answer telephones, customer service work, and assist in blood product delivery functions. The position requires a high school diploma and is a grade 3.

Analysis

The clinical services/laboratories department employees are quite distinct from the collection employees. Management and supervision of the two groups is entirely separate. Most of the clinical services/laboratories department work in the Employer's Columbia facility, separate from the collection employees. In the past year, only one transfer has occurred between the two groups, one clinical laboratory technician voluntarily transferred to a collection technician I position. There is no evidence of any significant interchange or contacts with collection employees. Further, there is little to no functional integration with the work of collection employees in that the clinical service/laboratory department employees do not work on blood products for distribution but primarily for treatment of patients. Further the qualifications, skills, and equipment used by the two groups of employees are markedly different. Clinical laboratory technicians and clinical laboratory technologists have bachelor's degrees and in some cases post-graduate degrees. They work in a laboratory environment, without donor contact, with sophisticated laboratory equipment, and such equipment as microscopes and generate reports. They have regular contact with patient physicians. I note that the clinical technologist II position is a grade 10, the highest grade an employee can attain.

More akin to collection employees are the therapeutic apheresis specialists who perform therapeutic apheresis procedures at hospitals and medical facilities. Other than the location and purpose of the work, the work of the therapeutic apheresis specialists is similar to that of the apheresis collection specialists in that the apheresis process is the same, although the machines are programmed differently. Despite the similarity in skills, there is no evidence that collection employees ever worked as therapeutic apheresis specialists or worked in the clinical services/laboratories. While an Employer witness testified that therapeutic apheresis specialists may be cross-trained to do collections work, there is no evidence that therapeutic apheresis specialists work with or as collection employees. To the contrary, the evidence establishes, at

[19] A number of clinical laboratory technologists have post-graduate education.

least for the present, that they do not work in concert or perform each other's functions. Moreover, therapeutic apheresis specialists have totally separate supervision from collection employees.

Significantly, the job description for therapeutic apheresis specialists requires that they be RNs. Although the Employer and Petitioner stipulated generally that none of the Employer's classifications require an RN,[20] given the job description that clearly requires that therapeutic apheresis specialists be RNs and given that all current therapeutic apheresis specialists are RNs, I am constrained to reject that stipulation as it applies to therapeutic apheresis specialists. I note that RNs are usually found to be professional employees for purposes of unit placement. *Centralia Convalescent Center*, 295 NLRB 42 (1989). Section 9(b)(1) of the Act provides that professional employees may not be included in a bargaining unit with nonprofessional employees unless they vote in favor of inclusion. The Board has held that the operative effect of Section 9(b)(1) is that a mixed professional–nonprofessional employee unit cannot be found, as a matter of law, to be the sole appropriate unit for collective-bargaining purposes. Otherwise, the statutory limitations set forth in 9(b)(1) would be without meaning since professional employees would either have to be represented as part of a comprehensive unit or not at all. *South Hills Health System Agency*, 330 NLRB 653 (2000). Thus, I cannot require the inclusion of the therapeutic apheresis specialists in the unit found appropriate here. Moreover, based on their separate functions, supervision, and work locations, I find that all the employees in the clinical services/laboratories department do not share a sufficiently strong community of interest with collection employees so as to require their inclusion in the unit. Accordingly, I shall exclude them from the unit.

Operations Systems Support

[20] A stipulation supported by the job descriptions, except for that of the therapeutic apheresis specialist.

These employees generally are responsible for maintenance of donor records, operation of the quality control laboratory, counseling of donors with positive test results, and maintenance of equipment used to collect and process blood products. The classifications at issue in this department are as follows:

Donor Management Technician I and II: Donor management technicians (DMTs) obtain BDR envelopes from the hospital services department to verify the accuracy of the data contained on tags and paperwork accompanying blood products to laboratories. They log donation information into computers which determine how quickly BDRs are processed, and they enter and update certain computer assertion codes, which refer to identifiers placed on computer records to flag donors for recruitment purposes (recruitment assertions) and to flag donors and donations with outstanding eligibility issues (deferral assertions). DMTs essentially perform registration and quality control of the sensitive data and paperwork generated in the collection process. Information entered into computers would include donor demographics, donation procedure type, and health history. DMTs undertake extensive reviews of all entered data. Lead DMTs and DMT IIs generate donor reports, and release logs which are sent to the hospital services department to clear products for release. DMTs are scheduled 24 hours a day during weekdays and have a single 8-hour shift on weekends. DMT I is a grade 3, DMT II is a grade 5, and lead DMT is a grade 6 on the Employer's pay scale.

Donor Management Review Technicians: Donor management review technicians (DMRTs) are responsible for review of BDRs with particular focus on health history criteria. They complete second reviews and 200 percent BDR (final) reviews of productive donor history records. DMRTs answer calls from collection employees and donors on health history criteria. DMRTs are responsible for giving post-donation care and instructions to donors who suffer reactions from donations. They answer toll-free telephone calls from donors who experience reactions. DMRTs report to the manager of donor management. They are required to have a

bachelor's degree in nursing, medical laboratory technology, or other science-related degree. There are four DMRTs and three lead DMRTs. DMRTs are scheduled to work 24 hours a day during weekdays, and an 8-hour weekend shift. However, they have on-call duties as they have to be available 24 hours a day, 7 days a week, year round. Lead DMRT is a grade 8 and DMRT is a grade 6 on the Employer's pay scale.

Donor Counselor II: Donor Counselors communicate positive test results to donors and provide counseling services to such donors. They arrange for such donors to provide blood samples for further testing for confirmation and may also recruit them to participate in national studies. Donors prohibited from donating at fixed centers or mobile sites by collection employees are referred to donor counselors for further information. Donor counselors field calls from hospitals regarding any complications caused by blood products. Although all current donor counselor IIs are registered nurses, suitable applicants for the position may have a bachelor's degree in health science, biology, or medical technology. The position is based at the Lindell facility, reports to the manager of donor health services, and is a salaried grade 8 on the Employer's pay scale.

Donor Health Records Specialists: Donor Health Records Specialists (DHRSs) work on data entry tasks relating to donor deferral registration and donor demographics. Update of deferral registration records may require that donors be removed from the deferral lists based on eligibility criteria. They enter information in a National Donor Deferral Registry, a nationwide database system designed to screen out disqualified donors. In cases where donors are found unsuitable through the blood-screening and BDR review, DHRSs research donations records and initiate withdrawal of blood products from the market. A bachelor's degree in nursing, medical laboratory technology, or other science field is required.[21] Donor health records specialists are a pay grade 7 on the Employer's pay scale.

[21] One of the lead donor health records specialists is a registered nurse and she performs medical evaluations as part of her work.

Donor Health Project Coordinator: The donor health project coordinator works on special projects that require research of donor records, including donation history, test results, retrieval of BDRs and product disposition information. The donor health project coordinator works a day shift, Monday through Friday, reports to a manager, and is a grade 8 on the Employer's pay scale.

Equipment Technician I, II, and Equipment Support Specialists: Three equipment technician I's and two equipment technician IIs are responsible for repair and maintenance of equipment used in the collection and processing of blood products. One equipment support specialist works on validation of equipment and may be consulted when staff have questions about equipment. All the positions are temporarily reporting to the director of hospital services. Two equipment technician I's work out of the Warson facility, all other equipment technicians work at the Lindell facility. Equipment technician I requires an associate's degree while equipment technician II requires a bachelor's degree in biomedical equipment engineering or related field; these position are grade 7 and 8, respectively on the Employer's pay scale.

Quality Control Technicians: Quality control technicians work in the quality control laboratory at the Lindell facility performing manual and automated testing of samples of manufactured red cells, platelets, and apheresis products. They may also perform quality control tests on samples of donated blood. Quality control technicians are required to have a bachelor or associate's degree in laboratory science or microbiology or a related field. Lead quality control technicians and quality control technicians are grade 7 and grade 6 positions, respectively and report to the chief medical officer.

Document Control Technicians: Document control technicians perform administrative duties relating to distributing, documenting, tracking and archiving regulated documents and correspondence within the department. There are two positions. They are grade 5 on the on the Employer's pay scale.

Record and Archive Technicians: These technicians maintain donor records, assist staff in researching records, control access to records to assure confidentiality, and are also responsible for the transfer of records to storage. They review BDRs to ensure health history questions have been adequately answered and all required signatures are present.

Donor Health Assistants: Two donor health assistants provide clerical support; they assist with research on donor files and records and help in the processing of donor notification letters and withdrawal of product letters sent to hospitals. Donor health assistants are grade 3 on the Employer's pay scale.

Analysis

Like the other departments, this department does not share supervision or management with collection employees. No employees have transferred between collection and this department. Also, unlike collection, much of operations systems support functions 24 hours a day during the weekdays, and some portion of weekends. Some employees, like donor management review technicians, in addition to regular work schedules, have significant on-call duties.

The donor health project coordinator, donor health records specialists, donor management technicians, donor management review technicians, document control technicians, donor health assistants, and record and archive technicians work to different degrees on processing of data and maintenance of the records generated in the course of the Employer's operations. These classifications work in office settings and do not go on blood drives or to fixed donor centers. There is some evidence of functional integration given that donor management technicians and donor management review technicians primarily work on data entry and review of BDRs and other records generated by collection employees at collection points. There is no indication, however, of interchange or contact with collection employees as such, except for telephone contact that collection employees may have with donor management review technicians with respect to donor eligibility questions. Donor

management technicians obtain BDRs and other records from the hospital services department and not directly from a collection employee. While certain operations systems support employees may be intimately familiar with BDRs and health history criteria, they typically do not go out to fixed door sites or mobile drives, and they are not competent to draw blood or perform any number of tasks associated with blood collection. These employees who work on processing of documents and records do not have the same types of skills and training that collection employees have, notwithstanding that Employer-provided training in record-keeping may overlap.

Donor counselors have contact with donors, but the nature of the contact is quite different; they provide counseling services to donors who have tested positive for diseases and to donors with reactions. Donor counselors work at the Lindell facility and have little, if any, personal contact with collection employees. At most, the evidence establishes that collection employees may refer donors with positive test results to donor counselors for further assistance and advice. Donor counselors do not visit fixed donor sites or mobile sites. They are also separately supervised and salaried. There is no evidence of any interchange or transfers between collection employees and donor counselors.

Furthermore, the evidence here establishes no interchange or contacts between employees working in the quality control laboratories and collection employees, despite some functional integration of operations. The quality control laboratories perform some testing on collected blood, but primarily the quality control laboratories perform tests on 1 percent of processed platelets and red blood cells and other apheresis products obtained from the hospital services department. The quality control technicians are based at the Lindell facility. Quality control technicians staffing the laboratory have bachelor or associate's degrees in laboratory science or technology, very different from the training of the collection employees. Quality control technicians have no donor contact.

Equipment technicians, responsible for maintenance of equipment used in the Employer's operations, perform duties that are functionally integrated to some extent with the work of collection employees. However, the role of collection employees is limited to tagging defective equipment and noting on the tags the problem with the equipment. Defective equipment is typically taken back to the Warson facility where equipment technicians have their shop. Collection employees do no have any regular contact with equipment technicians. Equipment technicians have educational backgrounds in engineering, which is quite different from the educational backgrounds of collection employees.

Again, although there is some functional integration between departments and common personnel policies and benefits, in view of the separate supervision, functions, limited contact, and absence of interchange, I find that such factors are not so strong as to make a unit limited to collection employees inappropriate. I will exclude operation systems support department employees from the unit.

Reference Laboratory

A reference laboratory, located at the Lindell facility, receives and tests blood samples from medical facilities and hospitals, typically smaller or rural hospitals that do not have their own laboratories. The reference laboratory also does specialized blood typing work for donors with rare blood types and assists with the manufacture of specialty blood products not routinely stocked. Employees in the reference laboratory work at the direction of the chief medical officer. The classifications at issue in this department are reference laboratory technician I, reference laboratory technician II, and clinical technologist II. All positions require a bachelor's degree and a number of employees in these classifications have post-graduate education. The clinical technologist II and reference laboratory technician II are grade 10 positions on the Employer's pay scale. Reference laboratory technician I is a grade 9 on the Employer's pay scale.

Analysis

These employees share no supervision, no common duties, skills, or functions. Even functional integration is somewhat attenuated, given that blood samples coming into the reference laboratory have not been collected by collection employees. While there may be certain blood-handling equipment and devices used in common, there is no evidence of interchange or contact between collection employees and the reference laboratory employees. No transfers have occurred between the two groups and the two groups do not share common work sites. Accordingly, I find that reference laboratory department employees do not enjoy a sufficient community of interest with collection employees as to require their inclusion and I will exclude them from the unit.

Regional Quality

The regional quality department, to be distinguished from quality control, handles quality systems and regulatory affairs, process improvement, and process control. Located at the Lindell facility, this department serves an oversight function by reviewing data compiled from the quality control laboratories, generating reports for management, and ensuring that products meet manufacturing standards. The regional quality department staff also monitor collection and processing of blood products to ensure that work is performed consistent with the Employer's policies and applicable governmental regulations. The department also works on correcting any identified deficiencies in the collection and production process. The classifications at issue in this department are three quality assurance associates and two quality assurance specialists. A bachelor's degree in science is required for either position. Associates and specialists are salaried, and grade 9 and 8 respectively on the Employer's pay scale.

Analysis

These employees are separately supervised and have different skills, duties and functions. Quality assurance associates and specialists typically have no medical training or background. No employees have transferred between the two groups and there is no evidence

of interchange. However, certain quality assurance associates and specialists, those in the process control group, do perform inspection of operations, and, therefore, periodically observe collection employees at work. These on-site inspections are of relatively short duration, in that they are at the site for a fraction of the time the mobile site or fixed site is operative. Moreover, the quality assurance employees do not engage collection employees in conversation as they are on donor sites for inspection and audit purposes only, nor do they help collection employees perform collection work. Quality assurance associates and specialists may notify collection supervisors if they are concerned about what they observe. Unlike the collection employees, the quality assurance employees are salaried. Accordingly, I find that quality assurance associates and specialists do not have a sufficiently strong community of interest with collection employees, and I shall exclude them from the unit.

Internal Education

This department, based at the Lindell facility, is headed by the manager of education and training and is responsible for training of all employees. This department provides new employee orientation training, and more specialized, targeted training for specific classifications of employees. The classifications at issue are set forth below.

Training Specialist I, II and Education Coordinators: Three education coordinators work with individual departments to identify training needs and schedule training and may perform the actual training. Training specialists I and II perform training primarily by class instruction to employees, although they may precept employees, i.e. train employees on the job, as part of the training process. The positions are salaried.

Lead Development Manager: The lead development manager, a part time position, focuses on training supervisory staff in such areas as personnel practices, leadership development, interviewing and related matters. The position is salaried.

Document Control Technician: The document control technician maintains and distributes regulated documents used by the department, such as blood service directives,

blood service letters, local operating procedures and standard operating procedures. The document control technician keeps track of the training history of employees and ensures classes are taken in the proper order. The position is a grade 5 on the pay scale.

Analysis

The function of the internal education department clearly differs from that of the collection employees. The two groups are separately managed and supervised; generally work in separate areas, and the internal education employees are mostly salaried. During the past year, only two employees have transferred between the two groups: both transferred from collection technician positions to training specialist ll. However, these transfers were permanent and voluntary and thus are of limited significance. *Overnite Transportation Company*, supra. At the outset of the collection employees' employment, there appears to be some contact as the collection employees receive 3 weeks of classroom training. However, contact after that initial period appears to be sporadic and infrequent. Although the manager of education and training testified that a training specialist designated to work on collection staff training works in the field with collection employees providing on-the-job training about twice monthly, this testimony is undercut by the testimony of collection employees who testified that they do not work with training staff and contacts are limited to infrequent training classes typically held at the Lindell or Warson facility. For example, one collection employee, employed 9 years and a team leader, testified that in the 6 months preceding the hearing, she had seen a training specialist just once, and that was in a training class. The testimony of the manager of education and training appears to be further undercut by the record evidence that much of the on-the-job training is provided by collection team leaders and preceptors, who are regular collection employees. Moreover, despite the fact that at least some of the training specialists have the same skills and familiarity with the collection tasks, they are not part of the day-to-day work of collection employees and even when providing on-the-job training, perform collection work only in

exceptional circumstances. Also, collection employees do not work in internal education. These differences in function, supervision, work situs, and working conditions, in light of the somewhat limited contact and interchange, sufficiently distinguish the interests of the training specialists and internal education coordinators so as not to require their inclusion in the unit.

The document control technician has no medical skills or training and contact is limited to forwarding documents to collection staff. The technician does not visit blood collection sites and has no personal contact with collection employees. The lead development manager's work is limited to management personnel. Accordingly, I find that the internal education department employees do not share a sufficient community of interest with collection employees, and I shall exclude them from the unit.

Marketing/Communications

This department is at the Lindell facility. The classifications at issue are set forth below.

Communications Coordinator/Media Relations and Sr. Communications Coordinator: The communications coordinator/media relations assists in developing and implementing publicity strategies for achieving collection goals. The senior communications coordinator prepares speeches, presentations, and strategic plans for management and is responsible for maintenance of the Employer's web site. Both positions require a bachelor's degree and related experience. The senior communications coordinator is a grade 10, the communications coordinator is a grade 9 on the Employer's pay scale.

Business Operations Specialist and Graphic Designer II: The business operations specialist assists in production of promotional literature, brochures, newsletters and direct mail pieces. The graphic designer II designs and develops promotional items for blood drives. Business operations specialist requires a bachelor's degree and is a grade 9 on the Employer's pay scale. Graphic designer II is a grade 7 on the Employer's pay scale. A bachelor's degree is preferred for the position.

Analysis

These employees have separate supervision, skills, duties, and functions. They are essentially office employees without any medical training or expertise that collection employees have. There are no transfers, interchange, or contact whatsoever with collection employees. Clearly, the marketing/communications employees share no significant community of interest with the collection employees, and I shall exclude them from the unit.

Facilities and Warehouse

The facilities department is responsible for maintenance of the Employer's fleet of about 192 vehicles, housekeeping, physical plant maintenance, and the print shop. The facilities director heads the department. The disputed facilities classifications include the fleet coordinator, print service technicians, general maintenance technicians I, II, and III, maintenance assistants, and lead maintenance assistants. The warehouse is located at the Warson facility. The disputed warehouse classifications include six stock and inventory assistants II.

Analysis

The employees in these two departments are supervised separately from the collection employees and there have been no transfers between the two groups in the past year. The fleet coordinator, print service technicians, maintenance technicians, and maintenance assistants have little to no interchange or contact with collection employees. The fleet coordinator works on maintenance of vehicles, maintenance technicians and maintenance assistants work on maintenance of the physical plant and housekeeping respectively. Print service technicians work on printing of materials. None of these employees have reason to visit or work at mobile drives. While maintenance technicians and maintenance assistants may well encounter the collection employees stationed at fixed sites, any contact is incidental as the employees are performing markedly different functions. Their skills and training are different from collection employees and, in some cases, such as maintenance assistants, there are no educational or training requirements. The stock and inventory assistants also do not interchange with collection employees. They are stationed at the Warson warehouse and have

little chance of encountering collection employees. They clearly do not have any skills or training similar to collection employees. Accordingly, I find that the employees in the facilities department and warehouse do not have a community of interest with collection employees, and I shall exclude them from the unit.

IV. SUPERVISORY STATUS OF TEAM LEADERS

The Employer contends that the team leaders should be excluded from the unit as supervisors. The Employer contends that the team leaders have the authority to assign work; to responsibly direct employees; to discipline and suspend employees; to effectively recommend termination and promotion: and to adjust grievances. The Employer does not contend nor does the record reflect that the team leaders have the authority to hire, transfer, lay off, recall, promote, discharge, or reward employees.

The Employer employs 76 team leaders out of approximately 255 collection employees. Team leaders are collection employees who have attended a team leader or “charge” class. The job descriptions of the collection specialists and the collection technicians ll require the occupant to perform “charge” duties, but such duties are not performed unless the class has been taken. The record does not reflect the content or duration of the “charge” class. Employees are offered the opportunity to attend the class based on their ability to lead and to carry out the Employer’s policies and procedures. Team leaders receive a 50-cent per hour increase, which is paid whether or not they are serving as team leader. Team leaders do not schedule employees; if more than one team leader is scheduled for a site, scheduling determines which team leader will serve as team leader for that day. In the absence of a team supervisor, the team leader is the highest-ranking employee at the site. Team leaders work at both mobile and fixed sites.

At the mobile sites, the team leader is the highest-ranking employee approximately 80 to 90 percent of the time. The team leaders have cell phones, however, and can contact their

team supervisor at any time. One team leader testified that she was instructed to contact the supervisor whenever she has a problem.

The schedule for the blood drive designates the employees assigned to the particular blood drive; the start time for the drive; and which van will be used to drive collection employees to the site, including the time and location from which the van will leave. If an employee is more than 5 minutes late, the team leaders are instructed to call their supervisors and to leave without the employee, who is then responsible for traveling to the mobile site in his own vehicle. The team leader has no authority to call in other employees. The team leader is responsible for determining which employees will initially be assigned to do which tasks, i.e. EBDR, taking health histories; or drawing blood. Some employees are not yet qualified to perform all tasks or are in training on some tasks; this information is indicated on the schedule and limits the team leader's discretion. Regardless of their initial assignments, the employees switch positions at set intervals according to the Employer's policy. The team leader also determines where to set up equipment for the blood drive according to the Employer's set policy, for example, the guidelines provide that if space allows and the team leader has three staff, he should set up a minimum of five beds and two histories; if five or six staff, set up six beds and four histories and so on. The team leader also determines when employees take breaks in accordance with the Employer's policy, which provides, for example, that breaks should be distributed evenly, donor flow must not be disrupted, all areas must be covered, only one staff should break at a time in small mobiles, and staff should try to break out of health histories. Approximately 20 percent of the time, donor flow does not allow the staff to take breaks. Generally, the team leader spends approximately 75 percent of his time performing the same work as the other team members.

Team leaders also work at fixed sites. It appears that team supervisors are more frequently present at fixed sites, approximately 3 to 4 days per week at St. Charles, and that a greater percentage of collection employees at fixed sites are team leaders. For example, at the South County Center, five of the eight apheresis employees are team leaders and three of the

seven whole blood employees are team leaders. At St. Charles, all four of the full-time whole blood employees are trained as team leaders, only the one part-time employee is not. At times, team leaders from fixed sites serve as team leaders on mobile sites. The record does not reflect any distinction between the authority of team leaders at the fixed sites and those at the mobile sites.

The team leader is responsible for the implementation of the Employer's quality control procedures. The team leader for apheresis checks the program for the apheresis machines for each donor. The various quality checks for equipment and procedures are documented; the team leader is primarily responsible for the document control and review to ensure completeness and accuracy. Team leaders complete the operation record, which shows, inter alia, the number of donors for the drive, production, the employee hours, and provides space for recommended changes for future blood drives at that location, for example, increase amount of set-up time. The team leaders also review forms, such as the sample tube collection log, quality control sheets, and BDR, which are filled out by other employees. If the team leader fills out any portion of these forms in the course of his work, he must have another employee review the form. No employee can review his own work. If a team leader, or any other reviewing employee, misses a mistake on these forms, the team leader or reviewing employee can be disciplined, as can the employee who originally made the mistake. The mobile blood drives have set end times as set forth on the schedule. The team leader cannot end a blood drive early or extend a blood drive. However, team leaders are instructed to accept late arriving donors so long as other donors are still on the beds.

The Employer distributes a booklet to all team leaders entitled "Team Leadership" which sets forth duties and responsibilities of team leaders and certain procedures. The interim collection manager for District 4 testified that she distributed copies of the booklet to all team members and told team members that the team leader was their supervisor on that particular drive and to follow the team leader's directions as if their team supervisor was present. Team

leaders attend monthly meetings with the team supervisors and sometimes the rest of the team also attends. Team meetings generally cover any procedural or organizational changes affecting the collections staff. Team leaders may also conduct team meetings, generally in the van on the way to the blood drive, to discuss assignments or new procedures. The team leaders are also responsible for inserting procedural updates in the various manuals as directed.

Employees cannot leave a blood drive early without permission. The team leaders have the authority to permit an employee to leave early if they are sick or if they have a family emergency. If a drive is very slow, and all employees are not needed, the team leader can ask an employee if they wish to leave early. However, the record does not establish that the team leader can make an employee leave early. Moreover, employees cannot leave early if they do not have alternate transportation, i.e. they are not dependent upon the Employer's van. The Employer contends that the team leader has the authority to send an employee home for improper job performance or misconduct. The Team Leadership booklet does not state that team leaders have this authority or any authority to discipline. Two team leaders testified that they were never told they had this authority nor had they ever sent anyone home for misconduct. One team leader testified that about one year ago, she received numerous complaints from donors about an employee being rude and hurting them when inserting the needle to draw blood. The word got around and donors were attempting to avoid the employee, which interrupted the donor flow. As the blood drive was almost over, the team leader asked the employee to go home, which the employee did. The employee did not receive a write-up or any other type of discipline. The team leader did not pursue the matter, but did report it on the operation record.

The Employer also contends that the team leaders have the authority to discipline employees by writing them up. If a team leader observes employee misconduct or poor performance, the team leader can fill out a form entitled "employee performance observation."

These forms or others may be placed in the employee's file after discussion with higher supervision; the team leader has no access to employees' personnel files. The record evidenced only three examples of such "observations." One example involved a team leader who received a report from an employee on a blood drive at a high school that two other employees were smoking in violation of the Employer's policy. The team leader instructed that employee to write up an employee performance observation form, the team leader did the same. The employees involved were eventually terminated, however, the decision to terminate was made by higher level management, including human resources, after discussion with the employee involved and considering other discipline contained in the employee's personnel file. On another occasion, the team leader reported to the supervisor that an employee walked off the job and recommended that the employee be terminated. The employee was terminated. A collection supervisor testified about an incident at a fixed apheresis site, where a team leader wrote an employee observation report on an employee's failure to properly monitor patients. The team leader turned the report into the collection supervisor, who interviewed both the team leader and the employee involved prior to taking any disciplinary action. This supervisor testified that she would always interview the employee involved upon receipt of an employee observation report. Although the interim collection manager testified that team leaders have the authority to issue formal written warnings, no evidence was presented that team leaders have actually issued such discipline or the effect of such discipline. The only evidence of a disciplinary policy is a progressive policy for mistakes, employees receive "deviations" for mistakes made and if an employee receives three deviations in a month, they have to develop a self-improvement plan. If the deviations continue, they can lead to formal verbal or written warnings. No evidence was presented that team leaders can issue deviations.

The interim collection manager also testified that prior to promoting an employee to team leader, she consults with the other team leaders because the team leaders work with the employees on a daily basis. She asks them for their opinions on the employee's work

performance and for their recommendation. She testified that she follows those recommendations.

ANALYSIS

The traditional test for determining supervisory status used for all employees, including health care employees, is: (1) whether the employee has the authority to engage in any 1 of the 12 criteria listed in Section 2(11) of the Act; (2) whether the exercise of such authority requires the use of independent judgment; and (3) whether the employee holds the authority in the interest of the employer. *NLRB v. Health Care & Retirement Corp*., 511 U.S. 571, 573-574 (1994).

The burden of proving supervisory status lies with the party asserting that such status exists. *Kentucky River Community Care, Inc*., 121 S. Ct. 1861, 1866 (2001). The Board has frequently warned against construing supervisory status too broadly because an employee deemed to be a supervisor loses the protection of the Act. See, e.g., *Vencor Hospital - Los Angeles*, 328 NLRB 1136, 1138 (1999); *Bozeman Deaconess Hospital*, 322 NLRB 1107, 1114 (1997). Lack of evidence is construed against the party asserting supervisory status. *Michigan Masonic Home*, 332 NLRB 1409 (2000). "Whenever the evidence is in conflict or otherwise inconclusive on a particular indicia of supervisory authority, [the Board] will find that supervisory status has not been established, at least on those indicia." *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989). Mere inferences or conclusionary statements, without detailed, specific evidence of independent judgment, are insufficient to establish supervisory authority. *Sears, Roebuck & Co*., 304 NLRB 193 (1991). Job descriptions, relied upon by the Employer, are only paper authority and are not given any controlling weight by the Board. *Training School at Vineland*, 332 NLRB 1412, 1416 (2000); *Audubon Regional Medical Center*, 331 NLRB 374, 421 (2000).

As the Employer asserts the team leaders are supervisors, the Employer has the burden of proving their supervisory status. The Employer does not contend and has provided no

evidence that the team leaders have the authority to hire, transfer, lay off, recall, promote, discharge, or reward employees. Therefore, this analysis is limited to whether team leaders can assign, responsibly direct, discipline, suspend, effectively recommend discharge, effectively recommend promotion, or adjust employee grievances. I find the Employer has not met its burden with respect to these criteria.

Assignment of Work

The team leader's role in assigning work does not demonstrate supervisory status. The Employer argues that the team leaders use independent judgment when assigning tasks and breaks to the team members and permitting employees to leave early. The team leader's authority to assign breaks is severely curtailed by the Employer's established guidelines as set forth above and requires no more than routine clerical judgment. *Providence Hospital*, 320 NLRB 717, 732 (1996). Similarly, the team leader's authority to approve an employee's early departure is limited to instances of illness, family emergency, or no work. Moreover, the team leader cannot require an employee to leave when work is slow. This limited authority does not require independent judgment and is insufficient to confer supervisory status. *Harborside Healthcare, Inc.,* 330 NLRB 1334, 1336 (2000).

The assignment of tasks to the team members also does not require the use of independent judgment. Assignment authority is supervisory where the purported supervisor exercises independent judgment or discretion in making assignments based on his or her own assessment of an employee. Independent judgment is demonstrated by evidence that an individual has discretion to assign work of differing degrees of difficulty or desirability on the basis of his or her own assessment of an employee's ability or attitude. See *Franklin Home Health Agency*, 337 NLRB 826, 831 (2002). The team leader's discretion in assignment is limited by the employee's training as set forth on the schedule, thus if an employee is only trained for health history, then the employee can only be assigned to set up and work health history. These assignments made on the basis of well-known and limited skills are simply a

routine matching of skills to requirements. *Franklin Home Health Agency*, supra; *KGW-TV*, 329 NLRB 378, 382, fn. 24 (1999); *Clark Machine Corp.,* 308 NLRB 555, 555-556 (1992). Moreover, for those employees who are trained in all facets of the job, the initial assignments have no meaning as employees are rotated at regular intervals according to the Employer's policy. This rotation policy severely undermines any argument that the initial assignments require independent judgment. This rotation policy is facilitated by the fact that the assigned tasks are routine and well-known to the employees. If the assigned tasks are so routine that they do not require a purported supervisor to differentiate between employee skill levels, the individual making the assignments will be found to be nonsupervisory. See *Patagonia Bakery Co., Inc*., 339 NLRB No. 74, slip op. at 1, fn. 1, 21 (2003).

The Employer argues that the team leaders exercise independent judgment in these assignments on certain occasions. One team leader testified that if she is aware that there had been problems on a previous blood drive for a particular client, the team leader may decide to ease into the drive by assigning the best, which is usually the most experienced, employees to draw blood initially. A team leader may also decide while driving with employees in the van, that an employee who is in a particularly bad mood, should not start out the day sticking needles in people's arms. In both these instances, however, the only assignment implicated is the initial assignment; the employees will subsequently rotate to the other assignments in accordance with the Employer's policy. The interim collection manager testified that she has instructed team leaders if an employee is having a particularly bad day drawing blood and has five or six "QNs" (quantity insufficient), the team leader can speak to them and, if necessary, reassign them to health histories. Contrary to the Employer's assertions, these assignment decisions, based on employee experience or pursuant to management guidelines, are merely a function of routine work judgment and not a function of authority to use the type of independent judgment required of a supervisor. *Harborside Healthcare, Inc.,* 330 NLRB 1334, 1336 fn. 12 (2000); *Clark Machine Corp.,* 308 NLRB 555 (1992). Moreover, the Employer presented no evidence

as to how often these decisions are made, that they impact the employees in any meaningful way, or how assignments are made at fixed sites. This lack of specific evidence is construed against the Employer. *Michigan Masonic Home*, 332 NLRB 1409 (2000). The authority to assign work, alone, without the use of independent judgment, is not indicative of supervisory authority. *McGraw-Hill Broadcasting Co., Inc.,* 329 NLRB 454, 456 (1999).

Responsible Direction

An employee who responsibly directs with independent judgment within the meaning of Section 2(11) of the Act, is one who has: (1) been delegated substantial authority to ensure a work unit achieves management's objectives and is thus "in charge"; (2) is held accountable for the work of employees in the unit; and (3) exercises significant discretion and judgment in directing his or her work unit. While the Employer presented some evidence that the team leaders meet the criteria listed in the first factor, the Employer has not met its burden in establishing that the team leaders meet the second and third factors of accountability for the work of other employees and independent judgment.

With respect to the first factor, approximately 80 percent of the time, the team leaders are the highest-ranking employees at the blood drive. The team leadership booklet states that the team leader is "in charge" of the team and that the team leader is expected to balance production, customer service, and compliance on a day-to-day basis to ensure integrity of the product and optimum donor experience. The team leaders are responsible for quality control on the drive, and they review the work of the team members on the blood drive.

With respect to the second factor, the Board has considered accountability in deciding whether individuals are supervisors. Individuals working in nursing homes, for example, who were not fully accountable for the work of the employees under them were found not to be supervisors. *Franklin Home Health Agency*, 337 NLRB 826, 830 (2002). The Employer argues that team leaders are held accountable for employees' mistakes because team leaders can receive discipline, i.e. a "deviation," if they review a document completed by an employee and

miss a mistake made by the employee. However, this discipline is for improper review, i.e. not catching the mistake, not for the mistake made by the employee. If the team leader catches the mistake, and properly performs his job, the team leader receives no discipline even though the employee still made the mistake. Moreover, employees other than the team leader frequently review documentation pursuant to the Employer's policy of reviewing all work and no employee reviewing his own work. If that employee misses the mistake, like the team leader, that employee may also receive a deviation for improper review. Thus the team leader is no more accountable for the work of other employees than any other employee is; like all employees, the team leader is only accountable for conducting a proper review. The Employer presented no evidence that team leaders are evaluated on how well their teams perform or any other evidence of accountability. This lack of evidence is construed against the Employer. *Michigan Masonic Home*, supra.

With respect to the third factor, the evidence also fails to establish that the team leaders exercise significant discretion and independent judgment when directing the work of the team members. While the team leaders do monitor the work of the team members to ensure they follow the Employer's policies and procedures; this responsibility does not require the exercise of significant discretion and independent judgment. While the team leaders can point out tasks that the employees have not performed properly, the ability to make sure the team members perform their duties and to call their attention to a particular task that has not been performed properly, does not require independent judgment. *Franklin Home Health Agency*, supra at 831; *Beverly Health and Rehabilitation Services, Inc.,* 335 NLRB 635, 669 (2001). The record also reflects that the Employer has established policies, which delineate how and by whom tasks can be performed. The record fails to reflect that team leaders can deviate from established protocols or standard operating procedures in directing the team members to perform certain tasks. Moreover, the team members' tasks are limited, repetitive, and well-known to the employees. Thus, the degree of independent judgment is reduced when directing employees in

such tasks. *Franklin Home Health Agency*, supra; *Beverly Health and Rehabilitation Services, Inc., supra; Evangeline of Natchitoches, Inc.,* 323 NLRB 223, 223-224 (1997). While the team leaders are frequently the highest-ranking employees at the drive, there are no specific instances of team leaders handling emergencies or unusual circumstances on their own. If problems arise, the team leaders are instructed to call their supervisor, who is always available by phone. Merely notifying a supervisor of an emergency or unusual situation is insufficient to confer supervisory status. *Chevron Shipping Co.,* 317 NLRB 379, 381 (1995); *Northcrest Nursing Home*, 313 NLRB 491, 498 499 (1993). Also, having the team supervisor available is further evidence that the team leaders do not exercise independent judgment. *Waverly-Cedar Falls Health Care,* 297 NLRB 390, 392 (1989). Accordingly, I have concluded that any judgment used by the team leaders to assign work and direct the team employees to perform discrete tasks is sufficiently curtailed by the Employer's established policies and procedures, and the tasks are of such a routine and repetitive nature, that the degree of judgment used to direct such tasks falls short of the independent judgment required for supervisory status. *NLRB v. Kentucky River Community Care*, 532 NLRB 706 (2001); *Chevron Shipping Co*., supra.

Discipline/Suspension/Discharge

The team leaders' authority to prepare employee observation reports, send employees home, and recommend discipline does not confer supervisory status on the team leaders. Although the interim collection manager testified that the team leaders have the authority to issue written warnings and place them in the employee's personnel file, the Employer presented no evidence that team leaders have ever issued any such warnings. Moreover, the interim collection manager acknowledged that this would not be done without the team supervisor's knowledge and the record establishes that the team leaders have no access to employee personnel files. This conclusionary testimony that the team leaders have the independent authority to issue written warnings, without specific evidence to support this testimony, is insufficient to establish that team leaders have the authority to issue written warnings and that

these warnings constitute discipline. *Michigan Masonic Home*, supra; *Sears, Roebuck & Co.*, 305 NLRB 193 (1991).

The team leaders do have the authority to correct employee mistakes and to fill out employee observation reports detailing mistakes, rule violations, misconduct, etc. that come to their attention. These reports do not have a space for recommendations for discipline, nor was any evidence presented that these reports automatically lead to discipline. The power to point out and correct deficiencies in job performance of other employees does not establish the authority to discipline. *Crittendon Hospital,* 328 NLRB 879 (1999). Reporting on incidents of employee misconduct is not supervisory if the reports do not always lead to discipline and do not contain disciplinary recommendations. To confer 2(11) status, the exercise of disciplinary authority must lead to personnel action, without the independent investigation or review of other management personnel. *Franklin Home Health Agency*, 337 NLRB 826, 830 (2002). The Employer has simply failed to establish that the employee observation reports constitute discipline or lead to discipline.

The Employer also contends that team leaders have the authority to send employees home as discipline. Only one example of the exercise of this authority was presented. In that instance, described in detail above, a team leader asked an employee to leave early because donors were complaining about the employee. The team leader testified that the blood drive was almost over and that this employee received no discipline for the incident. This single incident, where the drive was almost over, and when the employee left per request and was never disciplined, is insufficient to establish the authority to discipline. Moreover, the exercise of some purported supervisory authority in a sporadic manner does not confer true supervisory authority. *St. Francis Medical Center-West,* 323 NLRB 1046, 1048 (1997). While there is some conclusionary testimony that team leaders can send employees home for flagrant or egregious conduct, e.g. fighting or intoxication, such action is insufficient to demonstrate supervisory authority. *Vencor Hospital-Los Angeles*, 328 NLRB 1136, 1139 (1999); *Phelps Community*

Medical Center, 295 NLRB 486, 492 (1989). Sending employees home for flagrant violations is not indicative of supervisory status because the offenses are such obvious violations of the Employer's established rules that no independent judgment is involved in the decision. *Michigan Masonic Home,* 332 NLRB 1409, 1411, fn. 5 (2000). Moreover, the conclusionary testimony offered in support of this authority without detailed, specific evidence of independent judgment is insufficient to establish supervisory authority. *Sears, Roebuck & Co*., 304 NLRB 193 (1991).

The evidence is also insufficient to establish that the team leaders effectively recommend discipline or discharge. The authority to effectively recommend means that the recommended corrective action is taken without any independent investigation by a higher authority, not that the recommendation was eventually followed. *Children's Farm Home,* 324 NLRB 61 (1997). The only record instances of disciplinary recommendations were the recommendations to discharge the smokers and an employee who had walked off the job. However, the Director of Human Resources testified that she must be consulted for any discipline above the level of a written warning and that she independently investigates all termination recommendations.

Promotion

The team leaders have no authority to promote employees, but may be consulted prior to the promotion of a collection employee to team leader because the team leaders work with the employees on a daily basis. The team supervisors also work with the employees, however, and the record fails to reflect that the team supervisors follow the team leaders' recommendations without making any independent investigation. In these circumstances, the fact that promotions to team leader were made or delayed for some employees based on team leaders' input does not constitute effective recommendation. *Consolidated Services, Inc.,* 321 NLRB 845 (1996).

Adjustment of Grievances

The team leaders have no role in the formal grievance processes provided for in the MUA's collective-bargaining agreement or in the Employer's personnel manual. The Employer contends that the team leaders adjust grievances because they can resolve disputes between employees by talking to them, preparing an employee observation report, or by placing them in separate areas of the blood drive. This handling of "squabbles" between employees is considered routine and not supervisory. *St. Francis Medical Center–West,* 323 NLRB 1046, 1047-1048 (1998).

Accordingly, I conclude that the Employer has failed to meet its burden that team leaders are supervisors. As the team leaders work in positions previously found to be appropriately included in the unit, I shall include all collection employees who work as team leaders in the unit found appropriate here.

V. ELIGIBILITY FORMULA FOR PER DIEM EMPLOYEES

At hearing, the parties stipulated that per diem employees employed in unit classifications should be included in the unit provided they satisfy the Board's requirements for eligibility. Contrary to the Union, the Employer contends that the Board's traditional formula for per diem employees articulated in *Davison-Paxon Co.*, 185 NLRB 21 (1970), and reaffirmed in *Sisters of Mercy Health Corp.*, 298 NLRB 483 (1990), is appropriate in this case. Under the traditional *Davison-Paxon* formula, per diem employees must work an average of 4 hours per week in the 13-week period preceeding the eligibility cut-off date to be eligible to vote. The Union contends that the disparity in hours worked by the per diem employees is sufficient to warrant application of the more restrictive standard adopted by the Board in *Marquette General Hospital, Inc.*, 218 NLRB 713 (1975), which requires an average of 120 hours per quarter for eligibility.

The record establishes that as of the date of hearing, eight per diem employees work in included classifications. During the 12-month period from April 8, 2003 to April 4, 2004, each of

these employees worked at least some hours every 2 weeks, except for one employee who obviously did not commence employment until January 2004. For the 1-year period, the employees' total hours worked ranged from 236.25 to 522.25. In view of the per diem employees' regularity of work and the relatively narrow range of hours, I find that the *Davison-Paxon* eligibility formula is more appropriate. *S.S. Joachim and Anne Residence,* 314 NLRB 1191, 1193 (1994). Therefore, I shall adhere to the *Davison-Paxon* formula and eligible per diem employees will be those who have worked an average of 4 hours per week in the 13-week period preceeding the eligibility cut-off date.

VI. CONCLUSIONS AND FINDINGS

Based on the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.[22]

3. The Petitioner claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

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[22] The parties stipulated that the Employer is engaged in the collection, processing, and distribution of blood and related matters from its facilities located in Missouri and Illinois. During the past 12 months, a representative period, the Employer, in conducting its business operations, purchased and received goods and materials, valued in excess of $50,000 directly from points located outside the State of Missouri and derived gross revenues in excess of $250,000. The parties further stipulated the Employer is engaged in commerce within the meaning of the Act.

> All full-time, part-time, and per diem collection technicians I, collection technicians II, collection specialists, apheresis collection specialists, and collection support specialists, including team leaders, employed by the Employer in its donor services department, EXCLUDING office clerical and professional employees, guards, and supervisors as defined in the Act, and all other employees.

VII. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by Local Union No. 682, International Brotherhood of Teamsters, AFL-CIO. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period immediately prior to the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition in an economic strike, which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers, but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military service of the United States may vote if they appear in person at the polls.

Ineligible to vote are: (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc*., 156 *NLRB* 1236 (1966); *NLRB* v. *Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility,* 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, 1222 Spruce Street, Room 8.302, St. Louis, MO 63103, on or before **June 17, 2004**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (314) 539-7794 or by electronic mail at Region 14@nlrb.gov. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices of Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 days prior to the date of the election. Failure to follow the posting requirement

may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

VIII. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m. EST on **June 24, 2004**. This request may not be filed by facsimile.

Dated: June 10, 2004

at: St. Louis, Missouri

/s/ [Ralph R. Tremain]
Ralph R. Tremain, Regional Director
National Labor Relations Board, Region 14